IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE EIGHTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 4238 of 2003

Between:

K. Hanumantha Rao S/o Late Sri Venkateswara Rao
The Krishna District Coop. Central Bank Ltd., Suryarao Pet Branch,
Vijayawada.

..... PETITIONER

AND

1 The Registrar of Cooperative Societies, Andhra Pradesh
Gruhakalpa, Hyderabad.
2 The Chairman, Persons-Incharge Committee, The Krishna District Co-operative Central Bank Ltd.,
Machilipatnam, Krishna District.
3 The General Manager, The Krishna District Cooperative Central Bank Ltd.,
Machilipatnam, Krishna District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS, declaring the proceedings of the General Manager, The Krishna District Co-operative Central Bank Ltd., Machilipatnam in Ref.No.Adm.300/2001-2002, dated 05-10-2002 dismissing the petitioner from service of the Bank and also the Memo Ref.No. 316/Estt./2002-03, dated 22-01-2003 passed by the Committee of Persons-in-Charge of the Bank and communicated by the General Manager dismissing the appeal filed by the petitioner, as illegal and without jurisdiction and same may be set aside and further direct the respondents to reinstate the petitioner into service of the Bank and grant all consequential benefits.

Counsel for the Petitioner: MR.P.KRISHNA REDDY

Counsel for the Respondent No.1: GP FOR COOPERATION

Counsel for the Respondent Nos.2 and 3: B. Adinarayan Rao

The Court made the following:

ORDER:

Challenging the order, dated 05-10-2002, passed by the 3rd respondent-Krishna District Cooperative Central Bank Limited, dismissing the petitioner from service and its confirmation by the 2nd respondent-Chairman, Person-in-charge Committee, Krishna District Cooperative Central Bank Limited, as illegal and arbitrary and for a consequential direction to the respondents to reinstate him into service with all consequential benefits, the present writ petition is filed.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The case of the petitioner is that he was working as Staff Assistant/Supervisor in Krishna District Cooperative Central Bank Limited, Suryaraopet Branch, Vijayawada (for short 'the Bank') and besides, he has to supervise 17 P.A.C.S. including Nidamanuru P.A.C.S., and from the date of his appointment till suspension, he discharged his duties without any complaints. It is further seen that the 3rd respondent suspended the petitioner from service basing on the news item published in Eenadu daily newspaper dated 26-09-2001, alleging that due to negligence of the petitioner, paved the way for misappropriation of the deposits of Nidamanuru P.A.C.S Society to a tune of Rs.10,00,000/-. Subsequently, after conducting an enquiry, the petitioner was served with the notice dated 21-01-2002 to which he submitted his explanation on 30-01-2002. The charge framed against the petitioner is as under:

> "That Sri K.Hanumantha Rao had derelicted his duties as Supervisor of the Nidamanuru PACS and also abetted the persons involved in misappropriation of the funds of the society to the extent of Rs.46,87,950-10 for his personal benefit and thereby acted in a manner unbecoming of

an employee of the Bank derogatory to the code of conduct and committed grave misconduct."

Petitioner by his explanation, dated 08-04-2002, explained that prior to enquiry proceedings dated 28-11-2001, initiated against him under Section 51 of the A.P. Co-operative Societies Act, he informed the 3rd respondent about misappropriation of funds in Nidamanuru P.A.C.S. through his letter dated
22-09-2001. It is stated that in respect of the charge, two separate allegations were made i.e., dereliction of duties and his abetment and collusion with other staff members out of which negligence alone was proved to be held, which is illegal as enquiry officer under Section 51 is not a competent authority to initiate disciplinary proceedings against him. The domestic enquiry officer, after conducting enquiry, submitted his report dated
20-08-2002, basing on which the 3rd respondent issued a show cause notice dated 06-09-2002 calling the petitioner to submit his written objections.

Accordingly, petitioner submitted his explanation dated
20-09-2002, to the show cause notice. The 3rd respondent rejecting the explanation offered by the petitioner, dismissed him from service under the provisions of the Chapter XIII (Disciplinary Proceedings) of the Memorandum of Settlement dated 15-06-1997, against which petitioner filed an appeal before the 2nd respondent on 26-10-2002 and also the reminder dated 04-01-2003 which was also dismissed vide order dated 22-01-2003 which is illegal and arbitrary. It is further stated that the order dated 22-01-2003 passed by the 2nd respondent is vitiated for the reason that the
3rd respondent, who passed the order dated 05-10-2002, is also one of the members of the Committee of the Person-in-charge who has taken part in deliberation of the Committee while passing the order dated 22-01-2003. Aggrieved by the same, the present writ petition is filed.

A detailed counter affidavit has been filed by the
3rd respondent stating that the petitioner was a regular Supervisor in respect of 5

PACS s including Nidamanuru PACS, but not
17 PACSs. Some times, due to scarcity of staff, his services were also utilized as Staff Assistant in the Suryaraopeta Branch.
So, it cannot be said that he was overburdened with the work of the 5 PACSs. The petitioner was suspended pending enquiry on
26-09-2001 based on a news item published in “Eenadu” Daily on 26-09-2001. Though the petitioner stated that he visited the society number of times, but not even a single item of fraud was detected by him and this indicates that his wanton failure to supervise the affairs of the society only with a view to abet the persons involved in the fraud for his personal gain in one way or other. Thus the petitioner caused loss to the assets of the society and the Bank to the extent of Rs.46,87,950-10.

It is not true to say that the petitioner submitted a letter dated 22-09-2001 to the respondent bringing to the notice that the misappropriation took place. It is pointed out that when the petitioner stated before the Domestic Enquiry Officer that he could not detect the fraud, how could he submit his report dated
22-09-2001. However, it is obvious to note that his explanation dated 22-09-2001 said to have already been submitted does not absolve him of his responsibility. It is further submitted that the Enquiry Officer, (Sec.51) based on the seriousness of the irregularities committed by anybody in the affairs of the society,
is competent to suggest the action to be taken by the authorities concerned. Further the Disciplinary Authority after noting the failure of the petitioner in discharging his legitimate duties through the enquiry report is also competent to initiate disciplinary action even notwithstanding the recommendations of the Enquiry Officer.

In the report dated 20-08-2002 of the domestic enquiry stated that the allegation No.1 dealing with his dereliction of duties was proved and the allegation No.2 dealing with his collusion with others in the matter of misappropriation of funds of the society was not proved. Therefore, the entire fraud took place on account of total failure of the delinquent employee in discharging his legitimate duties and responsibilities fixed for the supervisors.
By derelicting his duties, he acted the way detrimental to the interests of the society and the Bank. The financial damage and the damage of reputation caused to grave misconduct.

The bank cannot repose trust in the delinquent employee and put the valuable and innocent customers money at stake. Thus by derelicting his duties as stated above, the petitioner employee of the bank proved to be an unworthy person to repose confidence by the bank and its customers, warranting severe punishment of dismissal from service of the bank. Under those circumstances, the petitioner was dismissed from service on 05-10-2002.

It is also not in dispute that the petitioner had filed an appeal dated 26-10-2002 before the Committee of Persons-in-charge, which was confirmed. It is denied that the order of disciplinary authority is contrary to Chapter-XIII of the memorandum of Settlement dated 15-06-1997. In this connection, it is submitted that the 3rd respondent is one of the members of the Committee and he is an official member but he did not participate in the discussions that have taken place on the appeal of the petitioner since the appeal is on the dismissal order passed by the 3rd respondent.

Besides, it is also stated in the counter that the petitioner was awarded a punishment of stoppage of one increment with cumulative effect vide proceedings dated 05-07-1990 for having misappropriated a sum of Rs.7,451/- on 20-04-1990 while working as a Shroff of the G.Konduru Branch. Thus it can be seen that the petitioner's previous record also is not good even to attract the provisions of Clause (c) of item XI of the settlement. Hence, prays to dismiss the petition.

Further, the petitioner filed his reply affidavit reiterating the contentions of the affidavit. It is specifically stated that in the counter the allegation that the 3rd respondent participated in the deliberations of the committee only denied but the presence of the 3rd respondent was not denied and the very fact that the 3rd respondent was present in the meeting of the committee, which decided the appeal is against the principles of natural justice.

Learned counsel for the petitioner vehemently contends that it is not a case of misappropriation or fraud committed by the petitioner, it is only, at best, negligence

of the petitioner in discharging his duties at the time of misappropriation of funds of one Nidamanuru Society. Petitioner was in-charge of 17 societies, which is an additional duty entrusted to him while discharging his regular duty as Staff Assistant, therefore, no negligence can be attributed to him and in view of the fact that the fraud and misappropriation was committed by the other staff members and employees of the Nidamanuru Society, but not the petitioner.

He further contends that the 3rd respondent who passed the impugned order is also Person-in-charge of the 2nd respondent committee, which confirmed the impugned order, therefore, the order of the appellate authority is vitiated and that no cogent reasons were given for dismissal of the petitioner and that there was no financial loss caused to the Bank. In view of the fact that out of the service proceedings under Section 60(1) of the

A.P. Cooperative Societies Act, the amount misappropriated by the employees of Nidamanur society is recovered, hence, his contention that the punishment imposed by the disciplinary authority as confirmed by the appellate authority is disproportionate to the proved misconduct.

Learned counsel appearing for the respondents 2 and 3 contends that it is a gross negligence on the part of the petitioner in not tracing out fraud and irregularities committed by the staff of Nidamanur Cooperative Society, primarily agricultural cooperative society, in spite of his number of visits to the society. She further contends that due to lapses on the part of the petitioner and the serious irregularities committed by him, an amount of Rs.46,87,950-10 was misappropriated. She further contends that the proceedings under Section 60(1) of the Cooperative Societies Act and the departmental proceedings are separate and distinguished proceedings under which some amount has been recovered, but it does not mean that the dismissal order is liable to be set aside. She further contends that though the 3rd respondent, who passed the impugned proceedings, is a member of the Person-in-charge Committee, has not participated in disposal of the appeal, hence, she prays to dismiss the writ petition.

The findings of the enquiry officer have not been challenged. The enquiry report is also not attacked for non-observing the principles of natural justice. It is not

argued that the findings of the enquiry officer are not based upon any evidence or material on record. It is also not the case of the petitioner that the findings of the enquiry officer are perverse. Therefore, this Court has to proceed on the presumption that the enquiry was conducted in accordance with law. When the enquiry is conducted by the enquiry officer in accordance with law, then the only question required to be answered in this writ petition is whether the punishment imposed by the disciplinary authority, which was confirmed by the appellate authority shocks conscience of this Court.

The charges levelled against the petitioner is that he derelicted his duties as Supervisor of Nidamanur PACS and abetted the persons involved in misappropriation of the funds of the society to the extent of Rs.46,87,950-10 for his personal benefit and thereby acted in a manner unbecoming of an employee of the bank derogatory to the code of conduct and thus committed grave misconduct. With regard to the charge No.2, it is alleged that the persons involved in misappropriation have adopted various methods and those methods adopted by them could have been arrested, if the petitioner was sincere in his supervision. Not even a single item of fraud was detected by him which indicates his wanton failure to supervise the affairs of the society, only with a view to abet the persons involved in the fraud for his personal gain in one way or the other. Thus the petitioner caused loss to the assets of the society and the bank to the extent of
Rs.46,87,950-10, therefore, the action of the petitioner is detrimental to the interest of the society and the bank. Though it is alleged that the petitioner has not committed any misappropriation of amount as per the categorical finding given by the enquiry officer that the delinquent employee (petitioner) did not appear to have any collusion with the staff of the society and had any personal gain in the transactions, but his inaction caused damage both to the society and financing the bank. Thereafter,
a show cause notice proposing punishment has been issued to the petitioner and the explanation offered by him was not satisfactory, the disciplinary authority passed the impugned order removing the petitioner from service. Challenging the same, petitioner filed an appeal before the Person-in-charge Committee. Though one of the grounds taken in the writ petition that the disciplinary authority-3rd respondent who passed the impugned order is also one of the members of the Person-in-charge committee-2nd respondent, but at the same time, in the counter affidavit, it is

specifically stated that the disciplinary authority has not participated in the appeal proceedings, hence on that ground the order of the appellate authority does not suffer from any infirmities. Learned counsel for the petitioner submitted that the order of the appellate authority does not contain any reasons, which reads as under:

> "The Committee of the Persons-in-charge of the Bank has carefully considered and examined in depth the Appeal/Mercy petition filed by Sri. K.Hanumantha Rao, Supervisor (dismissed) for condoning the punishment of dismissal. The appeal does not merit any consideration even on humanitarian grounds as the extent of loss and damage caused to the Society and Bank due to his gross dereliction and negligence is irreparable. Hence the appeal is not considered and the punishment already imposed is confirmed".

A perusal of the order indicates that the appellate authority applied its mind and came to the conclusion that there was a gross dereliction and negligence on the part of the petitioner.

However, the learned counsel for the petitioner contends that the disciplinary proceedings are governed by the provisions of

I.T. Award dated 28-05-1970 under Chapter-XIII, the petitioner was ordered for dismissal from service by clause iv(j) of the chapter, which reads as follows:

> "doing any act prejudicial to the interests of the Bank or gross negligence or negligence involving or likely to involve the bank in serious loss;"

It is contended that Clause vi(c) of the said Chapter which is in respect of 'neglect of work and negligence in performing duties, which is a minor misconduct where the punishment may be warned or censured; or have an adverse remark entered against him; or have his increment stopped for a period not longer than six months; but not major penalty of dismissal from service.

In the domestic enquiry matters the disciplinary and appellate authorities who are vested with the powers to impose suitable disciplinary action against the employees

that cannot be interfered with unless the punishment imposed by the disciplinary authority is disproportionate to the proved misconduct. The petitioner being a supervisor of this society ought to have inspected the society periodically. The explanation offered by the petitioner that he was in-charge of 17 other societies, primarily agricultural cooperative societies, and though it is stated by the learned counsel for the respondent that he was kept in-charge of 5 societies at the relevant point of time, that does not relieve him from discharging his duties in taking a prompt care and action.

The serious financial irregularities committed by the staff of the society would have been noticed by the writ petitioner, if he was sincere in discharging his duties as supervisor of the society. As seen from the enquiry report, at several occasions, petitioner visited the primary agricultural society, Nidamanur but failed to notice the lapses or serious financial irregularities. The staff and employees of the society admittedly misappropriated the amount to a tune of Rs.46,87,950-10ps. It is not a small amount; it is a huge amount in so far as the primary agricultural society like Nidamanur is concerned. Even the explanation offered by the petitioner is that he has to supervise 17 societies which were under his control, therefore could not detect the financial irregularities in the Nidamanur PACS. Such conduct or attitude of the petitioner cannot be pardoned, since it is his responsibility and duty to supervise a particular society and having visited the society number of times, there was a gross negligence on his part in not verifying the registers and papers properly and had taken a slight precaution in going through the registers and vouchers and the loan applications, certainly the same should have been avoided or checked until the entire episode has come in the newspaper. Petitioner has not evinced any interest to lookafter the affairs of the society. The carelessness is entirely different from gross negligence. While discharging duties the care that may be taken in the circumstances have not been taken by the petitioner.

The petitioner being a supervisor is a particular person in this case and because of his negligence an amount of Rs.46,87,950.10 has been misappropriated by the staff and members of the Nidamanur PACS. Now the petitioner cannot turndown and say that the amount has been recovered by virtue of proceedings under Section 60(1), which cannot be pardoned**.** In view of the serious allegations proved against the petitioner, this Court is of the considered opinion that the act of the petitioner

squarely falls in clause iv(j) of the settlement dated 15-6-1997, therefore, there are no grounds to interfere with the punishment imposed by the disciplinary authority and as confirmed by the appellate authority, since the same is in conscience with the proved misconduct.

Accordingly the writ petition is dismissed. No order as to costs.

K.C. BHANU, J

Dated: 18-07-2005

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